

DOCKET FILE COPY ORIGINAL

RECEIVED

JUL - 7 1997

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotment)

FM Broadcast Stations)

(Galesburg, Illinois, and)

Ottumwa, Iowa))

MM Docket No. 97-130

RM-8751

TO: Chief, Allocations Branch

COMMENTS OF GALESBURG BROADCASTING COMPANY

Galesburg Broadcasting Company, licensee of Station WGBQ(FM), Galesburg, Illinois,¹ by its attorney, in response to the Notice of Proposed Rule Making released herein on May 16, 1997, hereby submits its comments in support of the proposal to amend the Table of FM Allotments to substitute Channel 224B1 for Channel 224A at Galesburg, Illinois.

Background

Galesburg Broadcasting's predecessor in interest, Northern Broadcast Group, Inc., filed its Petition for Rulemaking for the change in WGBQ's allotment on January 16, 1996. Therein, it noted that grant of its proposal would entail a change in the reference coordinates for the vacant Channel 224C3 allotment at Ottumwa, Iowa, to comply with the spacing requirements of the Commission's rules.

¹ Galesburg Broadcasting Company acquired the license of WGBQ on July 2, 1997, pursuant to Commission consent granted May 16, 1997 (File No. BALH-970320GG).

On March 22, 1996, Gillbro Communications Limited Partnership ("Gillbro"), licensee of Station KTWa, Ottumwa, Iowa, filed an application to upgrade that facility from its current operation on Channel 224A to Channel 224C2 at its present transmitter site. Because of short-spacing with Station KJJY, Channel 223C2, Ankeny, Iowa, Gillbro requested processing under Section 73.215 of the Rules. Significantly, the Gillbro application did not consider the pending Petition for Rulemaking of Northern to upgrade Station WGBQ.

Of even greater significance, Gillbro's application totally ignored its own recent history: After successfully petitioning the Commission to modify the Table of Allotments to upgrade its Class A allotment to Class C3 (5 FCC Rcd 4685), Gillbro applied for and received a construction permit for a Class C3 operation by KTWa (See File No. BPH-901019IA, granted February 26, 1991). However, Gillbro did not construct the authorized facilities, and on August 18, 1992, its counsel wrote the Commission, advising that it would not construct the C3 facilities, and requesting cancellation of the construction permit (See Exhibit A hereto).

Thirteen months later, on September 23, 1993, the Commission sent Gillbro a letter by certified mail. Therein, noting the foregoing history, and the fact that Gillbro had taken no further action to implement its C3 allotment, the Commission stated:

" . . . KTWa is presently receiving the benefit of Class C3 protection while only providing the service of a Class A station. Failure to implement Class C3 facilities in a timely manner constitutes 'warehousing' of unused spectrum to the preclusion of other potential users seeking to provide additional broadcast service to the public. . . .

"Please note that, if you intend to apply for Class C3 facilities, you must submit a construction permit application on FCC Form 301. If this application is filed before any conflicting rulemaking is initiated, the application will take precedence. If filed later, the application will be subject to the outcome of the rulemaking proceeding. Report and Order, Docket 91-348, 7 FCC Rcd 4917, 57 Fed. Reg 36018, released August 4, 1992. If you do not intend to apply for Class C3 facilities and wish to remain a Class A station (with no changes to the licensed operation), you must submit an application on FCC Form 302-FM to modify KTWA's license and include a statement specifically requesting that the Ottumwa, IA Channel 224 allotment be DOWNGRADED to Class A status." (Emphasis added, footnote omitted).

(See Exhibit B hereto).

Gillbro ignored the Commission's advice: It neither refiled for a Class C3 construction permit, nor filed a modification of license application to downgrade to Class A status -- although it apparently has continued to operate in the Class A mode during the intervening four year period. Thus, KTWA has continued to perpetuate the spectrum "warehousing" which the Commission condemned in 1993.²

Discussion

The WGBQ upgrade proposal is straight-forward: As shown in the attached **Area and Population Study** of WGBQ's engineering consultant (Exhibit C hereto), implementation of the proposed WGBQ upgrade would bring new service to a population of 38,553

² Curiously, the discussion at footnote 1 to the instant NPRM concerning the KTWA C3 permit ignores the Commission's September 23, 1993 letter to Gillbro, and the cautionary language therein that any KTWA application filed subsequent to the initiation of a conflicting rulemaking "will be subject to the outcome of the rulemaking proceeding."

persons in an area of 2,361.2 sq. km., and a withdrawal of service from a population of 1,993 persons in an area of 282.2 sq. km., for a net gain of 36,560 persons and 2079 sq. km.³

Galesburg Broadcasting Company hereby represents that it will promptly apply for an upgraded B1 facility for Station WGBQ if its requested allotment is adopted, and to build the new facility promptly if authorized.

Consideration of KTWA's C2 upgrade application should be withheld, pending the outcome of the instant rulemaking, consistent with the Commission's September 23, 1993 letter to Gillbro. Even if entitled to consideration in the instant proceeding, KTWA's upgrade proposal should be treated with considerable skepticism, in view of Gillbro's failure to implement its previously authorized Class C3 upgrade; its failure to follow the prescribed procedures to downgrade its Ottumwa allotment as spelled out in that letter; and its impermissible warehousing of spectrum for the past seven years.

³ By contrast, a comparison of the total population projected to be served by KTWA's Class C3 operation in its 1990 application (71,850 persons [based on a 1986 "special census"] in an area of 3,980 sq. km.) with that projected in its 1996 C2 application (59,171 persons in an area of 6,114 sq. km.) suggests a loss of over 12,000 persons despite a gain in area served of over 2,000 sq. km. While a comparison based upon 1990 census figures can be expected to reflect some population gained by a Class C2 operation by KTWA as compared with its forfeited C3 permit, it is clear that its projected gain area suffered a substantial population decline from 1986 to 1990.

Conclusion

In summary, the Commission is urged to promptly amend its FM Table of Allotments to substitute Channel 224B1 for 224A at Galesburg, Illinois.

Respectfully submitted,

GALESBURG BROADCASTING COMPANY

By: 

Donald E. Ward
Law Offices of Donald E. Ward
1201 Pennsylvania Ave., N.W.
Fifth Floor
Washington, D. C. 20004
(202) 626-6290

July 7, 1997

Its Attorney

Jul. 1, 1997 12:18PM
Mike [unclear]

PEPPER & CORAZZINI

ATTORNEYS AT LAW

200 MONTGOMERY BUILDING

1320 K STREET, NORTHWEST

WASHINGTON, D.C. 20006

(202) 296-0600

EXHIBIT A

ROBERT LEWIS THOMPSON

OSCAR P. SHALL

C. THEODORE MALLORY

OF COUNSEL

FREDERICK W. FORD

1988-1989

TELECOPIER (202) 296-5572

VINCENT A. PEPPER
ROBERT F. CORAZZINI
PETER GUTHANN
WILLIAM J. FRANKLIN
JOHN F. GARIGLIA
TODD J. HARRIOTT
NEAL J. FRIEDMAN
ELLEN S. HANDELL
HOWARD J. BARR
LOUISE CYBULSKI
JENNIFER L. RICHTER
* NOT ADMITTED IN D.C.

Aug 19 10 10 AM '92
AUG 19 10 10 AM '92
AUG 19 10 10 AM '92

RECEIVED
Aug 19 4 41 PM '92
FBI BRANCH

August 18, 1992

RECEIVED

AUG 18 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, DC 20554

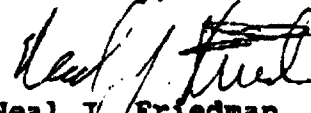
Re: KTWB(FM), Ottumwa, Iowa
(FCC File No. BPH-9010191A)

Dear Ms. Searcy:

This letter is written on behalf of Gillbro Communications, Limited Partnership, licensee of the above-referenced station. This is to advise the Commission that the facilities authorized under the above-referenced construction permit will not be constructed. Gillbro Communications respectfully requests cancellation of the construction permit.

Should you or the staff have any questions regarding this filing, kindly communicate directly with the undersigned.

Sincerely,


Neal J. Friedman

FCC MAIL SECTION

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

SEP 27 10 35 AM '93

23 SEP 1993

IN REPLY REFER TO:
1800B3-DEB

DISPATCHED BY

Certified Mail--Return Receipt Requested

Gillbro Communications Limited Partnership
Radio Station KIWA (FM)
211 East Second Street
Ottumwa, IA 52501

In re: [REDACTED]; Ottumwa, IA
Gillbro Communications
Ltd. Partnership
Upgrade to Class C3

Gentlemen:

Pursuant to the Report and Order in MM Docket No. 89-365, 5 FCC Rod 4685, 55 Fed. Reg. 31186 (1990), effective September 10, 1990, the Commission modified the allotment for KIWA from Channel 224A to Channel 224C3. The Report and Order deleted the old channel 224A from the Table of Allotments (47 CFR § 73.202) and substituted Channel 224C3 therein. KIWA was afforded a period of 90 days from the September 10, 1990 effective date to file a construction permit application on FCC Form 301 for Class C3 facilities.¹ Although the old Class A allotment was deleted, KIWA was permitted to continue operations on the old channel pending the grant of a Class C3 construction permit and the implementation of Class C3 operation.²

¹ Because the rulemaking to upgrade KIWA to Class C3 on Channel 224 [Docket 89-365] commenced prior to May 21, 1990, KIWA is required to file only the minor change application filing fee with the Form 301 application, and need not submit the rulemaking fee. See Fee Collection Program, Gen. Docket 86-285, 5 FCC Rod 3558, 55 Fed. Reg. 19148 (1990).

² On October 19, 1990 KIWA submitted application BPH-901019IA for directional Class C3 facilities. This application was granted on February 26, 1991 and a construction permit with the same file number was issued. The construction permit expired on August 26, 1992 with neither an application on Form 302-FM for license to cover that permit nor a Form 307 application to extend the permit being filed. Consequently, the permit was cancelled by letter dated November 18, 1992. As of this date, another construction permit application on FCC Form 301 for Class C3 facilities has not been received.

A Class C3 station, being larger than a Class A station, requires greater protection from encroachment by other stations. Thus, KIWA is presently receiving the benefit of Class C3 protection while only providing the service of a Class A station. Failure to implement Class C3 facilities in a timely manner constitutes "warehousing" of unused spectrum to the preclusion of other potential users seeking to provide additional broadcast service to the public. Thus, your unfilled Class C3 allotment could result in your being made a party to an allocation rulemaking seeking to downgrade the Ottumwa, IA Channel 224C3 allotment.

Please note that, if you intend to apply for Class C3 facilities, you must submit a construction permit application on FCC Form 301.³ If this application is filed before any conflicting rulemaking is initiated, the application will take precedence. If filed later, the application will be subject to the outcome of the rulemaking proceeding. Report and Order, Docket 91-348, 7 FCC Rod 4917, 57 Fed. Reg. 36018, released August 4, 1992. If you do not intend to apply for Class C3 facilities and wish to remain a Class A station (with no changes to the licensed operation), you must submit an application on FCC Form 302-FM to modify KIWA's license and include a statement specifically requesting that the Ottumwa, IA Channel 224 allotment be DOWNGRADED to Class A status. No application filing fee is required for the Form 302-FM modification-of-license application.⁴

Forms 301, 302-FM, 155 (the Fee Form to accompany the Form 301), and the Mass Media Services Fee Filing Guide can all be obtained from the Commission at (202)-632-3676. It is suggested that a copy of this letter be attached to any filing to facilitate the Commission's processing of that filing.

Sincerely,

Dennis Williams

Dennis Williams
Chief, FM Branch
Audio Services Division
Mass Media Bureau

cc: Pepper & Corazzini

³ Alternatively, KIWA could specify Class A facilities in its Form 301 application with an effective radiated power between 3.0 kW and 6.0 kW at its licensed site (assuming the antenna height above average terrain remains 100 meters or less), and request that the allotment be downgraded to Class A.

⁴ In the event that KIWA should decide later to upgrade its operations, it may be able to do so in a construction permit application, pursuant to the new procedures adopted in the Report and Order in MM Docket 92-159, 8 FCC Rod 4735, 58 Fed. Reg. 38534, released July 13, 1993, thereby avoiding the necessity for a rulemaking proceeding.

AREA AND POPULATION STUDY

The following engineering statement and attached exhibits have been prepared for Galesburg Broadcasting Company, licensee of FM Broadcast Station WGBQ at Galesburg, Illinois and are in support of their comments regarding a Petition for Rulemaking (RM-8751, MM Docket No. 97-130).

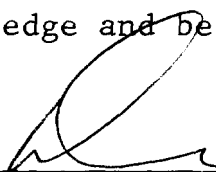
In the Notice of Proposed Rulemaking released by the Commission on May 16, 1997, the Commission requested the Petitioner to prepare an engineering analysis on the size and number of people in the gain area created by the proposed upgrade as well as the area and population of any possible loss. This statement and the attached exhibits constitute the requested study.

The attached map shows the area within the 1.0 mV/m. contour of the licensed WBGQ facility. It also demonstrates the 1.0 mV/m. contour which would result from a station operating as a Class B1 with maximum facilities and located at the requested reference coordinates. A third area represents the area where service from WGBQ would be lost.

- 2 -


As shown on the attached tables, a total of 38,553 people would be added to the WGBQ service area while 1,993 would lose service resulting in a net gain in the service area of 36,560 people. With regard to area, a total area of 2,361.2 sq. kilometers would be added. When combined with a lost service area of 282.2 sq. kilometers, the net gain in area would be 2079.0 sq. kilometers.

The preceding statement and attached exhibits have been prepared by me or under my direction and are true and correct to the best of my knowledge and belief.



Donald L. Markley, P.E.

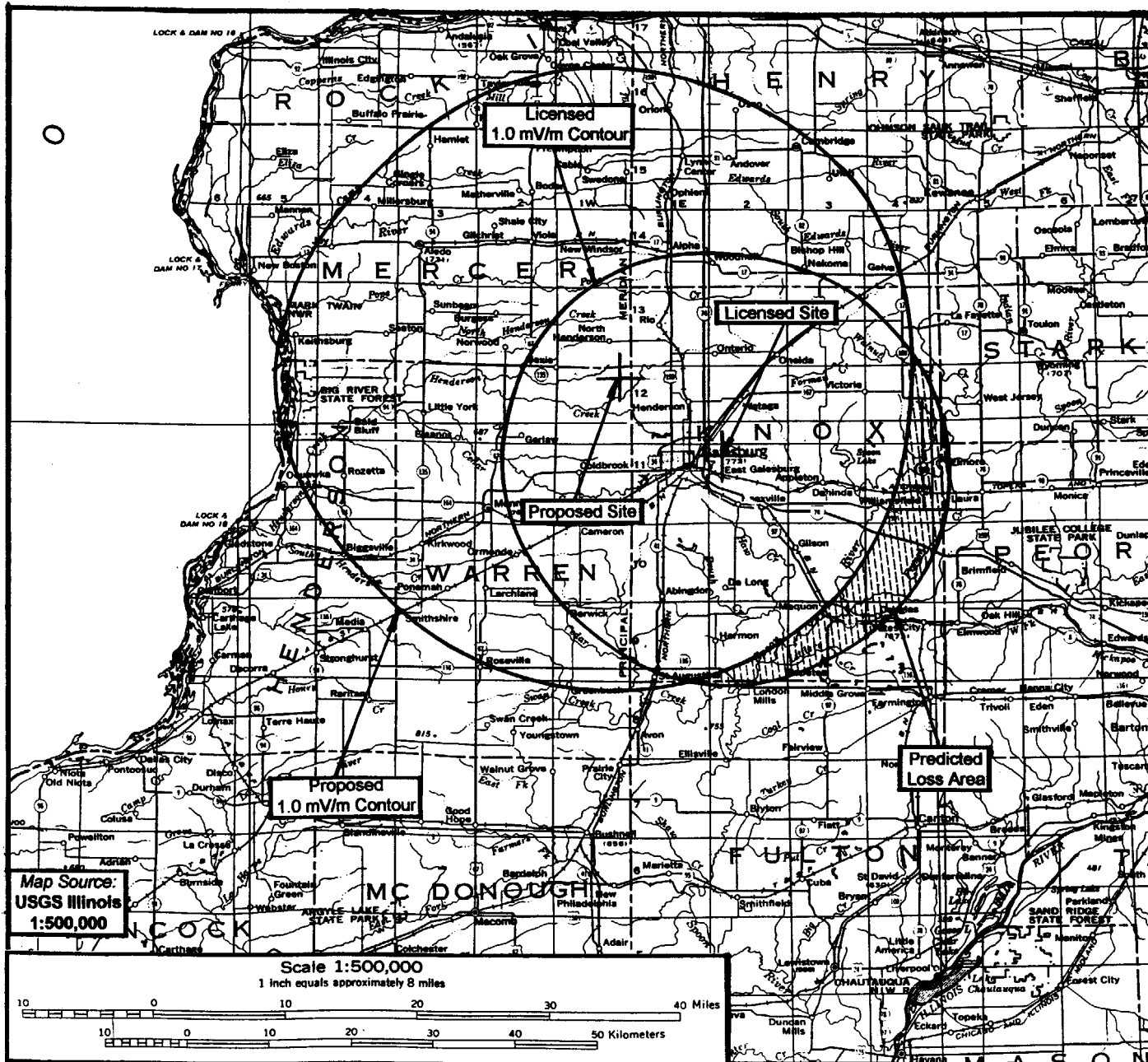
Subscribed and sworn to before me this 2nd Day of July, 1997.



Notary Public

My commission expires:





Service Area Comparison
Licensed and Proposed 1.0 mV/m Contours
FM Station WGBQ
Galesburg Broadcasting Company
July, 1997

COMPARISON STUDY

| | <u>Area</u> | <u>Population</u> |
|---------------|----------------|-------------------|
| WGBQ Proposed | 4670.6 sq. km. | 98,848 |
| WGBQ Licensed | 2309.4 sq. km. | 60,295 |
| WGBQ Loss | 282.2 sq. km. | 1,993 |

| | <u>Area</u> | <u>Population</u> |
|---------------|----------------|-------------------|
| Added Service | 2361.2 sq. km. | 38,553 |
| Lost Service | 282.2 sq. km. | 1,993 |
| Net Gain | 2079.0 sq. km. | 36,560 |

1990 Population Count

Title: WGBQ Proposed
Audit File: pcx07027.A01

Latitude: 41-02-50
Longitude: 90-27-30

| Azimuth | Dist (km) | Azimuth | Dist (km) | Azimuth | Dist (km) |
|---------|-----------|---------|-----------|---------|-----------|
| 0.00 | 38.10 | 45.00 | 37.60 | 90.00 | 35.90 |
| 135.00 | 37.50 | 180.00 | 38.30 | 225.00 | 39.50 |
| 270.00 | 42.30 | 315.00 | 39.00 | | |

Block Level Count Displayed by City and State

Area of contour : 4670.620 square km

Area of contour : 1803.336 square mi

1990 Population Count

Title: WGBQ Proposed
Audit File: pcx07027.A01

Latitude: 41-02-50
Longitude: 90-27-30

| | Houses | Total | White | Hisp | Black | Asian | AmIn | other |
|------------------------------|--------|-------|-------|------|-------|-------|------|-------|
| Illinois, Fulton County | | | | | | | | |
| County Total: | 11 | 22 | 22 | 0 | 0 | 0 | 0 | 0 |
| Illinois, Henderson County | | | | | | | | |
| County Total: | 872 | 1685 | 1671 | 3 | 5 | 3 | 3 | 0 |
| Illinois, Henry County | | | | | | | | |
| County Total: | 3964 | 10017 | 9865 | 93 | 22 | 15 | 17 | 5 |
| Illinois, Knox County | | | | | | | | |
| County Total: | 22488 | 53572 | 48934 | 1409 | 2802 | 317 | 82 | 28 |
| Illinois, Mercer County | | | | | | | | |
| County Total: | 6222 | 15295 | 15111 | 90 | 30 | 32 | 32 | 0 |
| Illinois, Rock Island County | | | | | | | | |
| County Total: | 521 | 1402 | 1382 | 17 | 0 | 2 | 1 | 0 |
| Illinois, Warren County | | | | | | | | |
| County Total: | 7217 | 16855 | 16199 | 204 | 353 | 68 | 19 | 12 |
| State Total : | 41295 | 98848 | 93184 | 1816 | 3212 | 437 | 154 | 45 |

1990 Population Count

Title: WGBQ Licensed
Audit File: pcx07027.A02

Latitude: 40-57-43
Longitude: 90-18-30

| Azimuth | Dist (km) | Azimuth | Dist (km) | Azimuth | Dist (km) |
|---------|-----------|---------|-----------|---------|-----------|
| 0.00 | 25.50 | 45.00 | 26.00 | 90.00 | 27.80 |
| 135.00 | 28.60 | 180.00 | 28.20 | 225.00 | 26.90 |
| 270.00 | 27.10 | 315.00 | 26.70 | | |

Block Level Count Displayed by City and State
Area of contour : 2309.439 square km
Area of contour : 891.679 square mi

1990 Population Count

Title: WGBQ Licensed
Audit File: pcx07027.A02

Latitude: 40-57-43
Longitude: 90-18-30

| | Houses | Total | White | Hisp | Black | Asian | AmIn | other |
|-------------------------|--------|-------|-------|------|-------|-------|------|-------|
| Illinois, Fulton County | | | | | | | | |
| County Total: | 138 | 336 | 336 | 0 | 0 | 0 | 0 | 0 |
| Illinois, Henry County | | | | | | | | |
| County Total: | 498 | 1159 | 1132 | 21 | 4 | 0 | 2 | 0 |
| Illinois, Knox County | | | | | | | | |
| County Total: | 22979 | 54765 | 50122 | 1414 | 2802 | 317 | 82 | 28 |
| Illinois, Mercer County | | | | | | | | |
| County Total: | 355 | 884 | 881 | 1 | 0 | 2 | 0 | 0 |
| Illinois, Peoria County | | | | | | | | |
| County Total: | 32 | 81 | 81 | 0 | 0 | 0 | 0 | 0 |
| Illinois, Warren County | | | | | | | | |
| County Total: | 1259 | 3070 | 3046 | 13 | 2 | 0 | 9 | 0 |
| State Total : | 25261 | 60295 | 55598 | 1449 | 2808 | 319 | 93 | 28 |

1990 Population Count

Title: WGBQ Loss Area
Audit File: pcx07027.A04

Latitude: 40-47-52
Longitude: 90-02-43

| Azimuth | Dist (km) | Azimuth | Dist (km) | Azimuth | Dist (km) |
|---------|-----------|---------|-----------|---------|-----------|
| 0.00 | 15.20 | 10.00 | 26.00 | 20.00 | 17.50 |
| 30.00 | 10.60 | 40.00 | 0.00 | 50.00 | 0.00 |
| 60.00 | 0.00 | 70.00 | 0.00 | 80.00 | 0.00 |
| 90.00 | 0.00 | 100.00 | 0.00 | 110.00 | 0.00 |
| 120.00 | 0.00 | 130.00 | 0.00 | 140.00 | 0.00 |
| 150.00 | 0.00 | 160.00 | 0.00 | 170.00 | 0.00 |
| 180.00 | 0.00 | 190.00 | 0.00 | 200.00 | 0.00 |
| 210.00 | 0.00 | 220.00 | 1.00 | 230.00 | 10.30 |
| 240.00 | 19.70 | 250.00 | 27.00 | 260.00 | 10.60 |
| 270.00 | 8.60 | 280.00 | 7.60 | 290.00 | 7.00 |
| 300.00 | 6.90 | 310.00 | 7.00 | 320.00 | 7.20 |
| 330.00 | 7.90 | 340.00 | 8.90 | 350.00 | 10.90 |

Block Level Count Displayed by City and State

Area of contour : 282.163 square km

Area of contour : 108.944 square mi

1990 Population Count

Title: WGBQ Loss Area
Audit File: pcx07027.A04

Latitude: 40-47-52
Longitude: 90-02-43

| | Houses | Total | White | Hisp | Black | Asian | AmIn | other |
|-------------------------|--------|-------|-------|------|-------|-------|------|-------|
| Illinois, Fulton County | | | | | | | | |
| County Total: | 199 | 488 | 488 | 0 | 0 | 0 | 0 | 0 |
| Illinois, Knox County | | | | | | | | |
| County Total: | 586 | 1414 | 1408 | 5 | 0 | 0 | 1 | 0 |
| Illinois, Peoria County | | | | | | | | |
| County Total: | 36 | 91 | 91 | 0 | 0 | 0 | 0 | 0 |
| State Total : | 821 | 1993 | 1987 | 5 | 0 | 0 | 1 | 0 |

Client: WGBQ

ERP= 25 KW. (13.979 dBk.)

| AZIMUTH DEG. T. | HAAT m. | DISTANCE TO CONTOURS IN KM. (MI) | |
|--------------------|------------|----------------------------------|--------------|
| | | 70 dBu | 60 dBu |
| 0.0 | 96.8 | 22.7 (14.1) | 38.1 (23.7) |
| 45.0 | 94.2 | 22.4 (13.9) | 37.6 (23.4) |
| 90.0 | 84.3 | 21.1 (13.1) | 35.9 (22.3) |
| 135.0 | 93.2 | 22.3 (13.9) | 37.5 (23.3) |
| 180.0 | 98.4 | 22.9 (14.2) | 38.3 (23.8) |
| 225.0 | 106.6 | 23.9 (14.9) | 39.5 (24.5) |
| 270.0 | 123.6 | 25.7 (16.0) | 42.3 (26.3) |
| 315.0 | 103.0 | 23.5 (14.6) | 39.0 (24.2) |

Client: WGBQ LICENSE

ERP= 3.8 KW. (5.798 dBk.)

| AZIMUTH DEG. T. | HAAT m. | DISTANCE TO CONTOURS IN KM. (MI) | |
|--------------------|------------|----------------------------------|-------------|
| | | 70 dBu | 60 dBu |
| 0.0 | 99.4 | 14.5(9.0) | 25.5(15.8) |
| 45.0 | 103.0 | 14.7(9.1) | 26.0(16.2) |
| 90.0 | 119.5 | 15.8(9.8) | 27.8(17.3) |
| 135.0 | 128.3 | 16.5(10.3) | 28.6(17.8) |
| 180.0 | 123.7 | 16.1(10.0) | 28.2(17.5) |
| 225.0 | 110.0 | 15.0(9.3) | 26.9(16.7) |
| 270.0 | 112.2 | 15.2(9.4) | 27.1(16.8) |
| 315.0 | 109.1 | 15.0(9.3) | 26.7(16.6) |

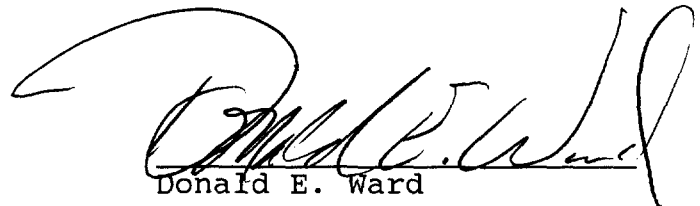
Certificate of Service

I, Donald E. Ward, hereby certify that on this 7th day of July, 1997, I have served the foregoing Comments by placing copies thereof in the U.S. Mail, postage prepaid, and addressed to the following:

Sharon P. McDonald, Esq.
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street N.W., Room 569
Washington, D.C. 20554

Neal J. Friedman, Esq.
Pepper & Corrazini, L.L.P.
1776 K Street N.W., Suite 200
Washington, DC 20006
Counsel to Station KTWA

Gillbro Communications Ltd. Partnership
209 S. Market Street
Ottumwa, IA 52501



Donald E. Ward